IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

CRL.A.No. 807 of 2000(C)

ST.123/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, THIRUVANANTHAPURAM

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APPELLANT:

THE DHANALAKSHMI BANK LIMITED,
FORT BRANCH, THIRUVANANTHAPURAM
REPRESENTED BY ITS SENIOR BRANCH MANAGER,
FORT BRANCH, THIRUVANANTHAPURAM.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS:

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1. V.BINU,
S/O.VIJAYAN,
K.S.MANDIRAM, KOLLAMKONA,
VARKALA P.O.

2. M.BAIJU, S/O.MADHAVAN,
PROPRIETOR, M/S.FIVE STAR RELEASE,
T.C.NO.24/287, SASTAMCOIL ROAD,
THYCAUD, THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.R.ANILKUMAR
SRI.SUDEESH KUMAR RAMAKRISHNA
SRI.SUNIL KUMAR A.G
PUBLIC PROSECUTOR, SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.10830/2007 IN CRL.A.NO.807/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

18.10.2007

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K.R.UDAYABHANU, J.

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Crl.A.No.807 of 2000(D)

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Dated this the 18th day of October, 2007

J U D G M E N T

The appellant is the complainant bank who had initiated proceedings under Section 138 of the Negotiable Instruments Act against the two accused/respondents with respect to the dishonour of a cheque for rupees three lakhs which was presented by the second accused which when presented at the drawee bank got dishonoured for want of funds in the account of the accused.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 4 and Exts.P1 to P6. Defence examined DW.1 and got marked Exts.D1 and D2.

3. PWs.1 to 4 are the officials of complainant bank and the drawee bank. The court below acquitted the accused on the ground that the proceedings have been initiated beyond the period stipulated vide Section 142(b) of the N.I.Act and also as it

has not been established that the bank is the holder in due course of the cheque for which the bank has just provided the discounting facility. The second accused has also got a case that soon after receipt of notice of dishonour the accused have executed a mortgage as well as a demand promissory note on 18/01/1996 itself towards the amount due under Ext.P1 cheque and hence, the proceedings initiated on the basis of dishonour of the cheque cannot be sustained. Further it is pointed out that as per Ext.D1 notice issued by the bank dated 23/01/1998, the above fact of execution of the promissory note and the mortgage over 38 cents of property comprised in Sy.No.3392/1 of Varkala Village is admitted. Before this court the second accused has also produced copy of the proceedings initiated by the bank before the D.R.T basing also on the promissory note and mortgage executed. It is submitted that the D.R.T has ordered sale of the property involved.

4. I find that as rightly held by the court below, it is mentioned in the complaint filed that the cheque was dishonoured on 11/01/1996 and notice of dishonour was given to

the accused and the accused requested the complainant to present the cheque after 01/03/1996 and hence, evidently, the cause of action alleged starts from the first notice. The contention that the first notice was only an oral one is not supported by pleadings or evidence. Hence, I find that on the above ground alone the complainant is not entitled to succeed. Moreover it is evident that subsequent to the dishonour of the cheque the accused have executed a mortgage as well as a promissory note and proceedings have been initiated on the basis of the above documents. Hence, I find that no cause of action based on the dishonoured cheque survives. In the circumstances I find that no reason to interfere with the findings of the court below. The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

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